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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/561,359	04/27/2006	John C. Evans	2765/189US	9659
23638 7590 10/30/2008 ADAMS INTELLECTUAL PROPERTY LAW, P.A. Suite 2350 Charlotte Plaza 201 South College Street CHARLOTTE, NC 28244				
EXAMINER				
ORWIG, KEVIN S				
ART UNIT		PAPER NUMBER		
1611				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/561,359

Applicant(s)

EVANS, JOHN C.

Examiner

Kevin S. Orwig

Art Unit

1611

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 July 2008.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
4a) Of the above claim(s) 19 and 20 is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-18 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 19 December 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-8508)
Paper No(s)/Mail Date 3/9/06, 7/21/08
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____
5) ☐ Notice of Inventor's Patent Application
6) ☐ Other: _____

DETAILED ACTION

Status of the Claims

Claims 1-20 are currently pending. Claims 1-18 are the subject of this Office Action. This is the first Office Action on the merits of the claims. Non-elected claims 19 and 20 are withdrawn from consideration.

Election/Restrictions

Applicants' election of Group I (claims 1-18) in the reply filed on Jul. 11, 2008 is acknowledged. Applicant has elected Group I without traverse. Claims 19 and 20 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim.

Priority

The earliest effective U.S. filing date afforded the instantly claimed invention has been determined to be Jun. 10, 2003, the filing date of PCT application PCT/US03/18326 to which the instant national stage 371 application claims priority.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 6, 7, and 8-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Roberts *et al.* (U.S. Patent No. 6,267,744; Issued Jul. 31, 2001; Reference No. 1 on IDS dated Mar. 9, 2006) (hereinafter Roberts *et al.*) in view of More *et al.* (U.S. Patent No. 5,092,318; Issued Mar. 3, 1992) (hereinafter More *et al.*) as evidenced by (Informational Article: "Something holistic about elastic" Jul. 21, 2001, via the Internet Archive).

1. Roberts *et al.* disclose elastic bandages having a substrate comprising warp and weft yarns (abstract; column 1, lines 30-54). The substrate taught by Roberts *et al.* comprises elastic and cotton yarns in a warp direction (element (b) of instant claim 1) (column 1, lines 30-54; column 2, lines 7-8). Roberts *et al.* teach that the weft yarns comprise cotton (element (c) of instant claim 1) (column 3, lines 4-7). Furthermore, the bandages of Roberts *et al.* comprise an adhesive on the substrate material (element (d) of instant claim 1) (column 1, lines 3-23; column 1, lines 46-64).
2. Roberts *et al.* do not teach knitted fabrics and do and are silent as to the presence of a lock-stitch on opposing edges of the substrate.
3. However, More *et al.* disclose elastic bandages that are knitted and comprise a lock stitch at the edges of the fabric (abstract; column 3, line 53-54; column 4, lines 30-37).
4. It would have been *prima facie* obvious to one of ordinary skill in the art at the time of the invention to have produced the bandages of Roberts *et al.* with knitted fabric since it is well known that knitted fabric has superior elastic properties relative to woven fabrics (see Internet Archive evidentiary reference). It would also have been *prima facie*

obvious to one of ordinary skill in the art at the time of the invention to include a lock stitch at both edges of the bandage fabric since More *et al.* teach that it is advantageous to include a lock stitch at the edges of their bandages to prevent fraying and that a lock stitch is more comfortable and nonallergenic than other types of ravel prevention. In light of these teachings, one of ordinary skill in the art at the time the invention was made would have been motivated to produce the bandage fabric taught by Roberts *et al.* as a knit fabric and to include a lock-stitch at the opposing edges to achieve a bandage with improved elastic properties and comfortability. Thus, the combined teachings of Roberts *et al.* and More *et al.* render claim 1 obvious.

5. Regarding claims 2, 6, and 7, Roberts *et al.* is silent as to the total % weight of the cotton yarns in the fabric substrate and is silent as to the weight of the fabric substrate. However, the combination of Roberts *et al.* and More *et al.* teaches an elastic bandage that is substantially similar in form and substance to that instantly claimed. The MPEP states that where the claimed and prior art products are identical or substantially identical in structure or composition, or are produced by identical or substantially identical processes, a *prima facie* case of either anticipation or obviousness has been established. *In re Best*, 562 F.2d 1252, 1255, 195 USPQ 430, 433 (CCPA 1977). "When the PTO shows a sound basis for believing that the products of the applicant and the prior art are the same, the applicant has the burden of showing that they are not." *In re Spada*, 911 F.2d 705, 709, 15 USPQ2d 1655, 1658 (Fed. Cir. 1990). See MPEP § 2112.01. Thus, in the absence of evidence to the contrary, it is the examiner's position that the weight of the cotton yarns in the bandage taught by the

combination of Roberts *et al.* and More *et al.* would be at least 97%, and the weight of the fabric substrate would be about 230 g/m², reading on claims 2, 6 and 7.

6. Roberts *et al.* teach the use of elastic yarns formed from polyurethane (i.e. these fibers may be 100% polyurethane) (column 2, lines 39-41), reading on instant claim 8.

7. Regarding claims 9 and 10, Roberts *et al.* teaches that the bandages of their invention have stretch characteristics that vary over a wide range (Figure 2). Since Roberts *et al.* do not measure these characteristics in the same way as instantly claimed, it is not clear that these measurements are equivalent. However, it is noted that the claimed stretch and regain percentages are not limited in any other way. Thus, based on the teachings of Roberts *et al.* (e.g. Figure 2), the bandages would have stretch of 85-95% at some point during the loading cycle test (e.g. see the right side of Figure 2). Further, it appears that the bandages would have a regain of 50-60% at some point as well (e.g. see the left side of Figure 2).

8. The combination of Roberts *et al.* and More *et al.* teaches an elastic bandage that is substantially similar in form and substance to that instantly claimed. The MPEP states that where the claimed and prior art products are identical or substantially identical in structure or composition, or are produced by identical or substantially identical processes, a *prima facie* case of either anticipation or obviousness has been established. *In re Best*, 562 F.2d 1252, 1255, 195 USPQ 430, 433 (CCPA 1977). "When the PTO shows a sound basis for believing that the products of the applicant and the prior art are the same, the applicant has the burden of showing that they are not." *In re Spada*, 911 F.2d 705, 709, 15 USPQ2d 1655, 1658 (Fed. Cir. 1990). See MPEP §

2112.01. Thus, in the absence of evidence to the contrary, it is the examiner's position that the bandages taught by the combination of Roberts *et al.* and More *et al.* would have a stretch of between 85-95%, and would also have a regain of 50-60% at least at some point during their use, reading on claims 9 and 10.

9. Roberts *et al.* teach that the adhesive comprises a pressure-sensitive adhesive (column 1, lines 16-18; claim 11), reading on instant claim 11.

Claims 1 and 3-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Roberts *et al.* in view of More *et al.* as applied to claims 1-4 above, and further in view of More (U.S. Patent No. 4,905,692; Issued Mar. 6, 1990) (hereinafter More).

10. The combination of Roberts *et al.* and More *et al.* teaches the elastic bandage of instant claim 1 as applied above.

11. Regarding claim 3, Roberts *et al.* and More *et al.* are silent as to the ply of the yarns employed in their inventions. Thus, neither Roberts *et al.* nor More *et al.* teach the use of single or double ply yarns.

12. However, More discloses a fabric for medical applications comprising warp and weft yarns. More teaches the use of single ply warp yarns (column 2, line 67 to column 3, line 1). The MPEP states that the selection of known materials based on their suitability for their intended uses is *prima facie* obvious. See MPEP § 2144.07. Since the single ply yarns are used by More for the same purpose taught by Roberts *et al.* and More *et al.* (i.e. construction of an elastic bandage), it would have been *prima facie* obvious to one of ordinary skill in the art at the time of the invention to use single ply

yarns as taught by More, in the bandages taught by Roberts *et al.*, reading on instant claim 3.

13. Regarding claim 4, Roberts *et al.* and More *et al.* do not teach weft yarns of 600-800 Decitex.

14. However, More teaches the use weft yarns which have a denier of 120-800 (i.e. a Decitex measure of about 133-889 (column 2, line 62-63). The MPEP states that the selection of known materials based on their suitability for their intended uses is *prima facie* obvious. See MPEP § 2144.07. Since these yarns are used by More for the same purpose taught by Roberts *et al.* and More *et al.* (i.e. weft knitting for an elastic bandage), it would have been *prima facie* obvious to one of ordinary skill in the art at the time of the invention to use single yarns of 600-800 Decitex as taught by More, in the bandages taught by Roberts *et al.*, reading on instant claim 4.

15. Regarding claim 5, More *et al.* are silent as to the type of yarn used for the lock stitch.

16. However, More teaches that polyester fibers are useful for the synthetic fibers of their invention. The MPEP states that the selection of known materials based on their suitability for their intended uses is *prima facie* obvious. See MPEP § 2144.07. Since these yarns are used by More for the same purpose taught by Roberts *et al.* and More *et al.* (i.e. the construction of a lock-stitch containing elastic bandage), it would have been *prima facie* obvious to one of ordinary skill in the art at the time of the invention to use polyester yarns for the lock stitch, in the bandages taught by Roberts *et al.*, reading on instant claim 5.

Claims 1 and 12-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Roberts *et al.* in view of More *et al.* as evidenced by (Informational Article: "Something holistic about elastic" Jul. 21, 2001, via the Internet Archive) and in further view of Carte *et al.* (U.S. Patent No. 6,495,229; Issued Dec. 17, 2002) (hereinafter Carte *et al.*).

17. The combination of Roberts *et al.* and More *et al.* teaches the elastic bandage of instant claim 1 as applied above.

18. Regarding claim 12, neither Roberts *et al.* nor More *et al.* teach the use of a coadhesive.

19. Carte *et al.* disclose adhesive bandages that comprise coadhesives (abstract; column 5, lines 5-22). Since a common usage of adhesive-containing elastic bandages is to wrap them around an injured portion of the body to provide support for the injured member, it would have been *prima facie* obvious to one of ordinary skill in the art at the time of the invention to use a coadhesive per the teachings of Carte *et al.* in the bandages of Roberts *et al.*, to provide a bandage that would adhere more readily to itself (i.e. to the coadhesive) relative to the body part to which it was applied. Thus, the combined teachings of Roberts *et al.*, More *et al.*, and Carte *et al.* read on claim 12.

20. Regarding claim 13, neither Roberts *et al.* nor More *et al.* teach discontinuous application of the adhesive.

21. Carte *et al.* teach that the application of rubber-based adhesives to bandages as a continuous layer is disadvantageous because it limits the ability of the skin to properly release water (column 1, lines 24-50). Carte *et al.* further teach the discontinuous

application of adhesives onto such articles as bandages (column 3, lines 21-29). Thus, it would have been *prima facie* obvious to one of ordinary skill in the art at the time of the invention to apply the adhesive in a discontinuous fashion per the teachings of Carte *et al.* in the bandages of Roberts *et al.*, to provide an adherent bandage that would still have the required breathability, reading on instant claim 13.

22. Regarding claim 14, the combination of Roberts *et al.* and More *et al.* renders obvious teaches a knitted bandage with a lock stitch in opposing edges as applied above (element (a) of instant claim 14). Furthermore, Roberts *et al.* disclose elastic bandages having a substrate comprising warp and weft yarns (abstract; column 1, lines 30-54). The substrate taught by Roberts *et al.* comprises elastic and cotton yarns in a warp direction (element (b) of instant claim 14) (column 1, lines 30-54; column 2, lines 7-8). Roberts *et al.* teach that the weft yarns comprise cotton (element (c) of instant claim 14) (column 3, lines 4-7). Furthermore, the Roberts *et al.* teach the application of an adhesive on one side the substrate material (column 1, lines 3-23; column 1, lines 46-49).

23. Neither Roberts *et al.* nor More *et al.* teach the use of a coadhesive.

24. Carte *et al.* disclose adhesive bandages that comprise coadhesives (abstract; column 5, lines 5-22). Since a common usage of adhesive-containing elastic bandages is to wrap them around an injured portion of the body to provide support for the injured member, it would have been *prima facie* obvious to one of ordinary skill in the art at the time of the invention to use a coadhesive per the teachings of Carte *et al.* in the bandages of Roberts *et al.*, to provide a bandage that would adhere more readily to

itself (i.e. to the coadhesive) relative to the body part to which it was applied. Thus, the combined teachings of Roberts *et al.*, More *et al.*, and Carte *et al.* read on claim 14.

25. Roberts *et al.* teach that the inelastic yarns (i.e. cotton yarns) will have a much larger cross-sectional area than the elasticized yarns (column 1, lines 65-66), reading on instant claim 15.

26. Roberts *et al.* teach that the fabric substrate includes an elastic yarn with an inelastic (i.e. cotton) yarn on each side of the elastic yarn (column 1, lines 41-43), reading on instant claim 16.

27. Roberts *et al.* teach that the warp yarns are arranged such that pairs of twisted inelastic (i.e. cotton) yarns on each side of the elastic yarns have the same twist, the pairs on opposite sides of the inelastic yarns therefore having opposite twist directions (column 1, lines 50-54), reading on instant claim 17.

28. Regarding claim 18, Roberts *et al.* are silent as to the method of applying the adhesive.

29. Carte *et al.* teach that the discontinuous adhesive pattern may be applied by any means known to those in the art, such as blowing the adhesive onto the fabric substrate (column 4, lines 51-54). Since Roberts *et al.* are silent as to the application method for the adhesive, the ordinary artisan would have turned to the literature for guidance in this matter. Thus, it would have been *prima facie* obvious to one of ordinary skill in the art at the time of the invention to use the known technique of blowing the adhesive onto the fabric substrate per the teachings of Carte *et al.* to produce the bandages of Roberts *et*

al., in order to provide a bandage that would be both adherent and breathable. Thus, the combined teachings of Roberts *et al.*, More *et al.*, and Carte *et al.* read on claim 18.

Conclusion

No claims are currently allowable.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kevin S. Orwig whose telephone number is (571)270-5869. The examiner can normally be reached Monday-Friday 7:00 am-4:00 pm (with alternate Fridays off). If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sharmila Landau can be reached Monday-Friday 8:00 am-5:00 pm at (571)272-0614. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

KSO
/Sharmila Gollamudi Landau/

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Supervisory Patent Examiner, Art Unit 1611